



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MAILED

MAY 27 2003

**Office of the Director
Group 3600**

In re Application of
Robert A. Vito
Application No. 09/783,774
Filed: February 15, 2001
For: ANTI-THEFT BRAKE LOCKING
DEVICE

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in reply to applicant's communication, filed in the United States Patent and Trademark Office on April 9, 2003, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition is **DENIED**

A review of the file record indicates that a Final Office action was mailed on December 4, 2002 setting a three-month shortened statutory period. The Office action also stated that, "due to the related litigation status of this reissue application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED."

The petition states that the application was transferred to the petitioner's from another law firm. When the application was entered into the docketing system, the petitioner and the docketing staff unintentionally failed to notice that extensions of time under 37 CFR 1.136(a) were not permitted. This error was discovered on April 1, 2003 by the petitioner. Petitioner requests the entry of the amendment submitted with the petition and includes a request for a one-month extension of time under 37 CFR 1.136(a).

As indicated in the Office communication of December 4, 2002, extension of time under the provisions of 37 CFR 1.136(a) is not permitted. Since an extension of time under 37 CFR 1.136(a) is not permitted, applicant's request for an extension of time will be treated under the provisions of 37 CFR 1.136(b). Pursuant 37 CFR 1.136(b), "[w]hen a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time period. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due."

Applicant's request for an extension of time under the provisions of 37 CFR 1.136(b) will not be granted since the request was not filed on or before the day which the reply was due. Since a timely filed reply was not received within the three-month period for reply which expired on March 4, 2002 and no extensions of time under the provisions of 37 CFR 1.136(a) or (b) is possible, the application was properly held abandoned, although no formal notice of abandonment has yet been mailed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.181."



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SNM/tpl: 5/20/03